

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TED MCCRACKEN)	
)	Civil Action
v.)	
)	No. 01-4466
FORD MOTOR CO., ET AL)	

MEMORANDUM

Padova, J.

November , 2001

This matter arises on the Motion of Defendants Ford Motor Co. and Jacques Nasser to Dismiss. Defendant Nasser seeks to dismiss all counts on the grounds of lack of personal jurisdiction. Defendant Ford Motor Co. seeks to dismiss count IV pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff, who is proceeding pro se, did not file a response.¹ For the following reasons, the Court grants the motion and dismisses the entire Complaint against Defendant Nasser and Count IV against Ford Motor Company.²

¹The Court recognizes that in its discretion, it could grant the motion as uncontested pursuant to Local Rule 7.1(c). However, the Court has declined to do so and instead has considered the motion on its merits.

²The motion to dismiss is filed on behalf of the Ford Motor Company and Jacques Nasser, Ford's Chief Executive Officer. Defendants have also briefed several of the issues with respect to Defendants Anne Scarborough and William Clay Ford. However, as there has been no service on either Defendant, and as there has been no formal appearance entered on behalf of either individual, the Court will consider the Motion to Dismiss with respect to Ford Motor Company and Jacques Nasser only. Defendants Anne Scarborough and William Clay Ford, Jr., should they be timely served, will of

I. Background

The instant action originally arises out of a serious motor vehicle accident sustained by Plaintiff Ted McCracken while driving his Ford Ranger. He brings strict liability, negligence, and breach of warranty claims against the vehicle's manufacturer, Ford Motor Company, the dealer C&C Ford, Inc., and various officers of the two entities, alleging defective product design. He also brings a fourth count, entitled "collusion," against the Ford Motor Company and its officers, as well as Anne Scarborough, a major shareholder in Ford, and John Scarborough, a State's Attorney for Cecil County, Maryland, in connection with an unspecified prosecution by the County of Plaintiff.³ In the collusion count, Plaintiff alleges that John Scarborough and Anne Scarborough are related, and that the purpose of the malicious prosecution was to prevent him from filing suit against Ford.⁴

course be free to raise the appropriate issues in an appropriate responsive pleading or motion.

The Motion also does not pertain to Defendants C&C Ford and its officers, who filed an answer to the Complaint, or Defendant John Scarborough, who has not yet been served.

³C&C Ford, Inc. and its officers are not named in Count IV.

⁴Defendants note that, contrary to Plaintiff's allegation, Anne and John Scarborough are not related. (Defs.' Mot. at 4.) This issue has no bearing on the disposition of this Motion.

II. Legal Standard

A. Dismissal for Lack of Personal Jurisdiction

Since lack of personal jurisdiction is a waivable defense, a defendant must raise the issue on a timely motion to dismiss pursuant to Federal Rule of Civil Procedure 12. See Fed. R. Civ. P. 12(h)(1); Singer v. Commissioner of Internal Revenue Service, No. Civ. A. 99-2783, 2000 WL 14874, at *2 (E.D. Pa. Jan. 10, 2000). When a defendant raises the defense of lack of personal jurisdiction, the plaintiff bears the burden of producing sufficient facts to establish that jurisdiction is proper. Mellon Bank (East) PSFS, Nat'l Assoc. v. Farino, 960 F.2d 1217, 1223 (3rd Cir. 1992). To establish the propriety of jurisdiction, the plaintiff must present a prima facie case for the exercise of personal jurisdiction by establishing with reasonable particularity sufficient contacts between the defendant and the forum state. Id. at 1223 (citing Provident Nat'l Bank v. California Fed. Sav. & Loan Assoc., 819 F.2d 434, 437 (3rd Cir. 1987)). Resolution of a motion challenging personal jurisdiction requires a determination of factual issues outside the pleadings. Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66 (3d Cir. 1984). The plaintiff, therefore, must go beyond the bare allegations of the pleadings and make affirmative proof through sworn affidavits or other competent evidence. Id. at 66-67 n.9; Singer, 2000 WL 14874, at *2.

B. Dismissal for Failure to State a Claim

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

Courts must liberally construe pro se pleadings and hold them "to less stringent standards than those drafted by attorneys." Bieros v. Nicola, 839 F. Supp. 332, 334 (E.D.Pa. 1993). Claims by pro se litigants may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McDowell v. Delaware State Police, 88 F.3d 188, 189 (3d Cir. 1996)(quotations omitted); see also ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. ALA, Inc., 29 F.3d at 859.

III. Discussion

A. Claims Against Mr. Nasser

A federal district court may assert personal jurisdiction over a nonresident of the state in which the court sits to the extent

authorized by the law of that state. Fed. R. Civ. P. 4(e). The Pennsylvania Long-Arm Statute provides in relevant part:

the jurisdiction of the tribunals of this Commonwealth shall extend . . . to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

42 Pa. Cons. Stat. Ann. § 5322(b) (West 2000). The Fourteenth Amendment of the United States Constitution limits the reach of long-arm statutes such that a court may not assert personal jurisdiction over a nonresident defendant who lacks minimum contacts with the forum or where maintenance of suit against him offends traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Provident Nat'l Bank, 819 F.2d at 436-37. Pennsylvania's long arm statute includes both general and specific jurisdiction over nonresident defendants. 42 Pa. Cons. Stat. Ann. §§ 5301, 5322 (West 2000).

General jurisdiction arises when the plaintiff's cause of action arises from the defendant's non-forum related activities. Vetrotext Certainteed Corp. v. Consol. Fiber Glass Prod. Co., 75 F.3d 147, 151 n.3 (3d Cir. 1996). To assert general jurisdiction over a nonresident, a plaintiff must establish that the defendant's contacts with the forum state are so "continuous and substantial" that the defendant should reasonably expect to be haled into court therein on any cause of action. Helicopteros Nacionales de

Colombia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984); Provident Nat'l Bank, 819 F.2d at 437. Furthermore, the defendant must have purposefully availed itself of the benefits and protections of the laws of the forum state. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985). Specific personal jurisdiction may arise when the defendant engages in particular or infrequent contacts with the forum state that are related to the plaintiff's claim. Pennzoil Products Co. v. Colelli & Assoc., Inc., 149 F.3d 197, 200 (3d Cir. 1998). To find specific personal jurisdiction, the court must first find that the relationship between the defendant, the cause of action, and the forum is sufficient to satisfy minimum contacts. Farino, 960 F.2d at 1222. Second, the court must conclude that the exercise of jurisdiction would comport with traditional notions of 'fair play and substantial justice.' Id.

Minimum contacts is a "fair warning" requirement of due process that is satisfied if the defendant has purposely directed his activities at forum residents and availed himself of the privilege of doing business there. Burger King, 471 U.S. at 472; Hanson v. Denckla, 357 U.S. 235, 253 (1958). The defendant's conduct and connections with the forum must have been such that the defendant could have reasonably anticipated his amenability to suit in the forum. Shaffer v. Heitner, 433 U.S. 186, 204 (1977). "Random," "fortuitous," or "attenuated" contacts are insufficient to satisfy the minimum contacts requirement, as are contacts

resulting from "the unilateral activity of another party or a third person." Burger King, 471 U.S. at 475. Only those contacts "proximately result[ing] from actions by the defendant himself that create a 'substantial connection' with the forum" satisfy due process. Id. Defendants can have minimum contacts where they deliberately engage in significant activity within the forum or create continuing obligations between themselves and forum residents. Id. at 475-76.

Plaintiff's Complaint fails to allege or provide proof of any contacts, let alone contacts sufficient to satisfy minimum contacts for purposes of specific personal jurisdiction or general personal jurisdiction over Defendant Nasser. Plaintiff alleges that Nasser is the President and Chief Executive Officer of Ford Motor Company, a Delaware corporation with its headquarters located in Dearborn, Michigan. (Compl. ¶¶ 3, 6.) However, Plaintiff does not assert that Defendant has any offices, property, or bank accounts in Pennsylvania, or that he conducts any business in Pennsylvania.⁵ Plaintiff merely alleges that Defendant "is ultimately responsible for the training and supervision of the managerial, engineering personnel, design and structure of [Ford's] motor vehicles sold." Plaintiff fails to set forth any contacts or evidence of such contacts. Accordingly, the Court concludes that it lacks personal

⁵In his Motion, Defendant Nasser asserts that he does not conduct any business in Pennsylvania.

jurisdiction over Defendant Nasser, and therefore dismisses the entire Complaint as to said Defendant.⁶

B. Count IV (Collusion) Against Ford Motor Co.

In Count IV, Plaintiff brings a "collusion" claim pursuant to 42 U.S.C. §§ 1981 and 1983. Plaintiff alleges that John Scarborough, State's Attorney for Cecil County, Maryland, maliciously prosecuted Plaintiff in order to interfere with his access to the courts and in retaliation for seeking to pursue legal action against the Ford Motor Company, Jacques Nasser, William Clay Ford, and Anne Scarborough. Specifically, he claims that the Defendants violated his constitutional rights "by hindering plaintiff's access to the courts, restraining plaintiff from filing civil action, and in retaliation for actively seeking to pursue action against [Defendants]." (Compl. ¶ 46.) Plaintiff also claims that the Defendants actions sought to "diminish plaintiff's opportunities and resources to maintain a class action liability action . . ." (Compl. ¶ 47.)

⁶When minimum contacts are satisfied, the court goes on to consider whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." Burger King, 471 U.S. at 476. The relationship between the defendant and the forum must be such that it is reasonable to require him to defend the suit there. International Shoe, 326 U.S. at 317. Because it is clear that there are no minimum contacts with respect to Nasser, there is no need to go on and perform the "fair play" analysis.

1. Claims pursuant to § 1981

Plaintiff purports to bring Count IV pursuant to 42 U.S.C. § 1981. Construing the Complaint liberally, the Court concludes that there is no basis for a § 1981 claim, because Plaintiff has not alleged a deprivation of rights on account of race, ancestry, or ethnic characteristics. See St. Francis Coll. v. Al-Khazraji, 481 U.S. 604, 613 (1987); Estate of Henderson v. City of Philadelphia, Civil Action No. 98-3861, 1999 U.S. Dist. LEXIS 10367, at *10 (E.D. Pa. July 9, 1999). There are no factual allegations, specific or implied, setting forth such a deprivation or supporting the existence of such an allegation. Accordingly, the Court dismisses any claims under § 1981.⁷

2. Claims pursuant to § 1983

Plaintiff also purports to bring Count IV pursuant to 42 U.S.C. § 1983. Section 1983 of Title 42 of the United States Code provides a remedy against "any person" who, under the color of law, deprives another of his constitutional rights. 42 U.S.C. § 1983 (1994); Carter v. City of Philadelphia, 989 F.2d 117, 119 (3d Cir. 1993). Of the Defendants named in this count, only John Scarborough is potentially a state actor. Although private parties may cause the deprivation of rights, they may only be subjected to liability under § 1983 when they do so under color of state law.

⁷Similarly, any claims under § 1985(3) for civil rights conspiracy are barred for failure to allege such a deprivation. Griffin v. Breckinridge, 403 U.S. 88, 102 (1971).

Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995), cert. denied, 516 U.S. 858 (1995) (citing Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978)). Determining whether there has been state action requires an inquiry into whether there is a sufficiently close nexus between the State and the challenged action so that the challenged action may be fairly treated as that of the State itself."⁸ Blum v. Yaretsky, 457 U.S. 991, 1004 (1982).

The Court, construing the Complaint liberally, concludes that Plaintiff fails to set forth any basis for determining that the

⁸The Supreme Court has set forth a two-pronged test to determine when private action is attributable to the state under § 1983:

The first question is whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority. The second question is whether, under the facts of this case, respondents, who are private parties, may be appropriately characterized as 'state actors.'

Lugar v. Edmondson Oil Co., 457 U.S. 922, 939 (1982). The Court of Appeals for the Third Circuit has delineated three Lugar sub-tests to determine whether there has been state action: (1) whether the private entity has exercised powers that are traditionally in the exclusive prerogative of the state; (2) whether the private party has acted with the help of or in concert with state officials, and (3) whether the State has so far insinuated itself into a position of interdependence with the private party that it must be recognized as a joint participant in the challenged activity. Mark v. Borough of Hatboro, 51 F.3d 1137, 1142 (3d Cir. 1995). The second of these tests appears applicable here. This discrete inquiry asks whether "the private party has acted with the help of or in concert with state officials." McKeesport Hospital v. Accreditation Council for Graduate Medical Ed., 24 F.3d 519, 524 (3d Cir. 1994). See also Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991) and Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970).

Ford Motor Company was acting under color of law as required for a claim under § 1983. The Court can conceive of no plausible scenario under which Ford could fairly be said to have been acting under color of law. With respect to Count IV, the only party that is alleged to have carried out any actions or activities was the state official, John Scarborough. There is no suggestion anywhere in the Complaint that Ford or any of the private individuals named in Count IV participated in the actions taken against the Plaintiff in arresting and prosecuting the Plaintiff. Accordingly, the Court concludes that there is no basis for the § 1983 claim, and therefore dismisses Count IV as to Defendant Ford Motor Company to the extent it raises claims under § 1983.

IV. Conclusion

For the reasons above, the Court grants Defendants' Motion to Dismiss. Counts I, II, III, and IV are dismissed as to Defendant Jacques Nasser. Count IV is dismissed as to Defendant Ford Motor Company. An appropriate Order follows.

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ORDER

AND NOW, this day of November, 2001, upon consideration of the Motion to Dismiss of Defendants Ford Motor Company and Jacques A. Nasser (Doc. No. 3), and any response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED**. In furtherance thereof, all claims against Defendant Jacques A. Nasser are **DISMISSED** with prejudice, and Count IV against Defendant Ford Motor Company is **DISMISSED** with prejudice.

BY THE COURT:

John R. Padova, J.